STATE OF MICHIGAN

COURT OF APPEALS

BENNIE M. STOVALL,

Plaintiff-Appellant,

v

CHILDREN'S AID SOCIETY, BOARD OF DIRECTORS OF CHILDREN'S AID SOCIETY, LINDA ASHFORD, JESSE BACALIS, UNITED WAY OF SOUTHEASTERN MICHIGAN, PLANTE & MORAN, MYRON LINER, RICHARD MEYERS AND JEFFREY C. RAHMBERG,

Defendants-Appellees,

and

LINDA LEE,

Defendant.

UNPUBLISHED
May 13, 1997

No. 189412
Wayne Circuit Court
LC No. 94-418652

Before: Taylor, P.J., and Gribbs and R. D. Gotham,* JJ.

PER CURIAM.

Plaintiff appeals as of right from two trial court orders granting defendants[1] summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). We affirm in part and reverse in part.

This case arises out of the termination of plaintiff's employment as executive director of defendant Children's Aid Society. Plaintiff's complaint alleged seven counts: (1) wrongful discharge; (2) intentional interference with a business relationship; (3) defamation; (4) invasion of privacy; (5) race and

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* Circuit judge, sitting on the Court of Appeals by assignment.

sex discrimination/public policy; (6) injurious falsehood; and (7) intentional infliction of emotional distress.[2]

I

Plaintiff first argues that the trial court erred in granting summary disposition of her wrongful discharge claim pursuant to MCR 2.116(C)(8).[3] We agree.

As stated in *York v 50th District Court*, 212 Mich App 345, 347-348; 536 NW2d 891 (1995):

> A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. However, a mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to create a cause of action. A motion for summary disposition pursuant to MCR 2.116(C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. On appeal, summary disposition pursuant to MCR 2.116(C)(8) is reviewed de novo as a question of law. [Citations omitted.]

Further, in a contract action the court may examine the contract in conjunction with a motion for summary disposition alleging the failure to state a claim upon which relief may be granted. *Second Benton Harbor Corp v St Paul Title Ins Corp*, 126 Mich App 580, 585; 337 NW2d 585 (1983).

Contracts for permanent employment are for an indefinite period of time and are presumptively construed to provide employment at will. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 636; 473 NW2d 268 (1991). An employee may overcome this presumption by proof of an express contract for a definite term, a provision forbidding discharge in the absence of just cause, or by proof that there was a promise implied in fact of employment security, such as employment for a particular period or to terminate only for just cause. *Id.* In deciding whether a party has assented to a contract, the Michigan Supreme Court has followed the objective theory of assent, focusing on how a reasonable person in the position of the promisee would have interpreted the promisor's statements or conduct. *Rood v General Dynamics Corp*, 444 Mich 107, 119; 507 NW2d 591 (1993).

The pertinent document is a memorandum of understanding between plaintiff and CAS which states:

> Anything in this Memorandum of Understanding notwithstanding, continuation of your employment as Executive Director remains subject to ongoing review by the Board of Directors which shall be consistent with all other established agency personnel policy procedures.

> It is understood that you are free to terminate your employment at any time. It is however, agreed that you will give the Board a minimum of 90 days notice before such termination. It is also agreed that the Board will continue your compensation but not necessarily your employment, for a period of at least 90 days following any notice which the Board may give regarding your termination.

Established agency policies state employees will be disciplined in proportion to the magnitude of the infraction and the past behavior of the employee related to the infraction except that probationary and contractual employees may be terminated at any time for any reason. Plaintiff alleged she was a just cause employee not subject to the at-will policy because she was a regular employee, not a probationary or contractual employee. The policies also state that progressive discipline will be followed except when the nature of the offense is grave and requires a more severe response. Plaintiff's wrongful discharge count alleged that defendant failed to follow the graduated discipline policy in firing her and that she was fired without cause. Taking the pleaded facts and reasonable inferences as true, we find plaintiff was promised that she would not be fired unless she committed a grave offense. This is not unlike a promise not to fire someone absent just cause. Thus, plaintiff stated a claim upon which relief could be granted. *Toussaint v Blue Cross*, 408 Mich 579, 610, 621-624; 292 NW2d 880 (1980).

II

Plaintiff also argues that the trial court erred in granting United Way's motion for summary disposition of her tortious interference with a business relationship count. Plaintiff asserts that she adequately pleaded this claim and that there was a genuine issue of material fact regarding whether United Way interfered with her employment relationship with CAS. We disagree.

In order to establish a cause of action for tortious interference with business relations, the following must be proven: (1) a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) an intentional interference inducing or causing a breach or termination of a relationship or expectancy; and (4) damages. *Pryor v Sloan Valve Co*, 194 Mich App 556, 560; 487 NW2d 846 (1992); *Berlin v Superintendent of Public Instruction*, 181 Mich App 154, 164; 448 NW2d 764 (1989). The interferer must intentionally do an act that is per se wrongful, or do a lawful act with malice that is unjustified in law for the purpose of invading the contractual rights or business relationship of another. *Patillo v Equitable Life Assurance Society of the United States*, 199 Mich App 450, 457; 502 NW2d 696 (1993). Here, it is questionable whether plaintiff sufficiently pleaded that statements made by United Way were the cause, and were intended to be the cause, of her firing. *Berlin, supra* at 164. In any event, summary disposition pursuant to MCR 2.116(C)(10) was proper because plaintiff failed to establish a genuine issue of material fact. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). Plaintiff offered no evidence showing that United Way intended to interfere with her employment relationship with CAS, or did a wrongful act, or acted with malice. *Patillo, supra* at 457; *Pryor, supra* at 560. The evidence presented indicates that United Way acted out of a desire to prevent what it saw as mismanagement of money collected from

the public for charitable purposes. The United Way comments of which plaintiff complained merely reflected United Way's concern and thus were privileged. *Smith v Fergan*, 181 Mich App 594, 596-597; 450 NW2d 3 (1989). United Way had reserved the right to inquire into CAS' financial status and, moreover, did not become concerned about CAS' status until alerted to it by former CAS board members.

III

Plaintiff further argues that the trial court erred in granting summary disposition of her defamation claim against CAS and United Way. We disagree.

The components of a cause of action for libel are: (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. *Royal Palace Homes, Inc, v Channel 7 of Detroit, Inc*, 197 Mich App 48, 51, 53; 495 NW2d 392 (1992). A communication is defamatory if it tends to harm the reputation of another so as to lower that person in the estimation of the community or deter third persons from associating or dealing with that person. *Glazer v Lamkin*, 201 Mich App 432, 438; 506 NW2d 570 (1993). A statement may be made under a qualified privilege. The elements of qualified privilege are: (1) good faith; (2) an interest to be upheld; (3) a statement limited in scope to this purpose; (4) a proper occasion; and (5) publication in a proper manner and to proper parties only. *Smith v Fergan*, 181 Mich App 594, 596-597; 450 NW2d 3 (1989). An employer has the qualified privilege to defame an employee by publishing statements to other employees whose duties interest them in the same subject matter. *Smith, supra* at 597. A plaintiff may overcome a qualified privilege only by showing that the statement was uttered with actual malice, i.e., with knowledge of its falsity or reckless disregard for the truth. *Id.* General allegations of malice are insufficient to establish a genuine issue of material fact. *Id*

Further, defendants were protected by a qualified privilege and plaintiff failed to establish a genuine issue of material fact that defendants acted with malice. *Smith, supra* at 597; see also *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 79; 480 NW2d 297 (1991). CAS was plaintiff's employer and so had an interest in plaintiff's job performance. United Way had an interest in plaintiff's proper disbursal of United Way funds. The comments complained of by plaintiff were limited to this interest in plaintiff's job performance and were made at meetings of the CAS board of directors and at a meeting between board members and United Way officials, proper occasions featuring proper parties. *Smith, supra* at 596-597. The statements plaintiff complains of in defendant Plante & Moran's Management Review similarly reflect and were limited to defendants' interest in plaintiff's job performance. *Id.* The Management Review was published only to those parties with a legitimate interest in seeing it. Moreover, plaintiff's performance review was published only to those CAS employees whose duties interested them in the subject matter. *Id.* The evidence presented also did not establish malice. The trial court did not err in granting defendants' motions for summary disposition on

plaintiff's defamation claim because plaintiff failed to establish that a genuine issue of material fact existed that defendants acted with actual malice so as to defeat their qualified privilege. *Radtke, supra* at 374.

IV

Plaintiff next argues that the trial court erred in granting summary disposition of her false light invasion of privacy count against CAS and United Way. We disagree.

In order to maintain an action for false-light invasion of privacy, a plaintiff must show that the defendant broadcast to the public in general, or to a large number of people, information that was unreasonable and highly objectionable by attributing to the plaintiff characteristics, conduct or beliefs that were false and placed the plaintiff in a false position. *Duran v The Detroit News, Inc,* 200 Mich App 622, 631-632; 504 NW2d 715 (1993). This cause of action cannot succeed if the contested statements are true. *Porter v City of Royal Oak,* 214 Mich App 478, 487; 542 NW2d 905 (1995).

In pleading her false light claim, plaintiff set out a claim so clearly unenforceable as a matter of law that no factual development could justify a recovery. *Peters v Dep't of Corrections,* 215 Mich App 485, 486-487; 546 NW2d 668 (1996). Plaintiff's false light claim states only that defendants republished defendant Plante & Moran's Management Review to "those who were unprivileged," and that her professional reputation and personal dignity were damaged. This is insufficient to establish a false light cause of action because even an intentionally false comment is not actionable unless it results in unreasonable and highly objectionable publicity that attributes the plaintiff's characteristics, comments, or beliefs, as false so that plaintiff is placed before the public in a false position. *Dzierwa v Michigan Oil Co*, 152 Mich App 281, 288; 393 NW 2d 610 (1986). Plaintiff failed to plead facts sufficient to establish that the statements in the Management Review were false, that they attributed to her false characteristics, beliefs, or conduct, or that they were publicized to a large number of people. *Id.*

Plaintiff cannot claim that the recipients of the statements comprise a "particular public" under the holding of *Beaumont v Brown*, 401 Mich 80, 105; 257 NW2d 522 (1977). The facts in *Beaumont* were far more egregious than those complained of in the instant case; further, the plaintiff in *Beaumont* brought his invasion of privacy claim as public disclosure of private facts, not as false light. *Beaumont, supra* at 85-96. Moreover, the statements complained of by plaintiff were not broadcast to a large number of people and were not broadcast beyond defendants and those privileged to receive the information. The evidence also suggests that the statements may have a basis in truth. *Porter, supra* at 487. Thus, the trial court did not err in granting summary disposition of the false light claim because plaintiff failed to establish that a genuine issue of material fact existed regarding her placement in a false light to a large number of people. *Radtke, supra* at 374.

V

Plaintiff also argues that the trial court erred in granting summary disposition of her race and sex discrimination claim. Although plaintiff may have adequately pleaded this count as to CAS, she did not

establish a genuine issue of material fact suggesting she was fired as the result of intentional discrimination or of disparate treatment.

A prima facie case of discrimination can be made by proving either intentional discrimination or disparate treatment. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 651; 513 NW2d 441 (1994). In order to establish a prima facie case of intentional sex discrimination, a plaintiff must show that: (1) she was a member of a protected class; (2) she was discharged or otherwise discriminated against with respect to employment; (3) the defendant was predisposed to discriminate against persons in the class; and (4) the defendant acted on the disposition when the employment decision was made. *Id.* In order to establish a prima facie case of sex discrimination under the disparate-treatment theory, a plaintiff must show that: (1) she was a member of a protected class; and (2) for the same conduct or performance, she was treated differently than a man. *Id.* Where, in response to a prima facie case of discrimination a defendant puts forth a legitimate, nondiscriminatory reason for its actions, the plaintiff has the burden of showing that the proffered reason was merely a pretext. *Id.* The plaintiff must set forth specific facts; conclusary allegations are insufficient to rebut evidence of nondiscriminatory conduct. *Dixon, supra* at 116. The requirements for establishing a prima facie case of racial discrimination are the same as for gender discrimination. *Id.* at 114-116. Plaintiff has failed to establish a genuine issue of material fact suggesting that she was fired as the result of intentional discrimination or of disparate treatment. *Coleman-Nichols, supra* at 651. Plaintiff offered no credible proof that defendants held a racist or a sexist bias toward her. Plaintiff also offered no evidence that conduct of a similarly situated male or white executive director of CAS was treated differently.

Plaintiff has also failed to establish a public policy claim against United Way. This Court has recognized a right to claim violation of public policy as grounds for a wrongful discharge claim: (1) where an explicit legislative statement prohibits the discharge, discipline, or other adverse treatment of employees who act in accordance with a statutory right or duty; (2) where the employee fails or refuses to violate a law in the course of employment; and (3) where the reason for a discharge was the employee's exercise of a right conferred by a well-established legislative enactment. *Garavaglia v Centra, Inc*, 211 Mich App 625, 629-630; 536 NW2d 805 (1995); *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 484; 516 NW2d 102 (1994). Plaintiff's situation does not fall into any of these categories. The trial court did not err in granting defendants' motion for summary disposition of plaintiff's discrimination claim because plaintiff failed to establish that a genuine issue of material fact existed regarding either a prima facie or public policy case of discrimination. *Radtke, supra* at 374.

VI

Plaintiff's final claim is that the trial court erred in granting United Way summary disposition of her injurious falsehood count. Summary disposition of this count was proper because plaintiff did not establish a genuine issue of material fact suggesting that United Way acted either with the intent to harm her or with actual malice in making the complained of statements. *New Franklin Enterprises v Sabo*, 192 Mich App 219, 223; 450 NW2d 326 (1991); *Kollenberg v Ramirez*, 127 Mich App 345, 352; 339 NW2d 176 (1983).

Affirmed in part and reversed in part. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Clifford W. Taylor
/s/ Roman S. Gribbs
/s/ Roy D. Gotham

[1] Defendants Children's Aid Society, Board of Directors of Children's Aid Society, Linda Ashford and Jesse Bacalis will hereinafter be referred to as "CAS." Defendants United Way of Southeastern Michigan, Plante & Moran, Myron Liner, Richard Meyers, and Jeffrey C. Rahmberg will hereinafter be referred to as "United Way."

[2] Plaintiff's brief on appeal does not argue that the intentional infliction of emotional distress count was improperly dismissed. In any event, we find that this count failed to state a claim upon which relief could be granted. *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996).

[3] At oral argument defense counsel specifically advised the court that he was seeking summary disposition of the wrongful discharge count under MCR 2.1116(C)(8) and not MCR 2.116(C)(10).